



County of Los Angeles

CHIEF ADMINISTRATIVE OFFICE

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DAVID E. JANSSEN
Chief Administrative Officer

April 4, 2003

To: Supervisor Yvonne Brathwaite Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

Board of Supervisors
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First District

YVONNE BRATHWAITE BURKE
Second District

ZEV YAROSLAVSKY
Third District

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Fifth District

STATE LEGISLATIVE UPDATE

County Child Support Payment Withheld: The County Child Support Services Department this week learned that the April administrative payment from the State would be withheld because the State agency is out of money. When the Legislature approved the agency's budget for the current year, it assumed that Federal Legislation would be enacted to "bail out" the State for \$98 million of the total child support penalty. That legislation did not pass so the agency's budget is \$98 million short. An urgency bill containing appropriations for contingencies or emergencies, including this deficiency, **SB 1070 (Chesbro)** passed the Senate on March 13, 2003 with only 3 dissenting votes but appears to have bogged down in the Assembly because of Republican concerns about some \$2 million in funding for IHSS wage increases. The bill is scheduled for a hearing in the Assembly Budget Committee on April 7.

Pension Obligation Bonds Hit Snag: As part of his January Budget, the Governor proposed that the State use short-term pension obligation bonds to finance the FY 2003-04 general fund retirement contribution to the State Public Employees' Retirement System and the State Teachers' Retirement System, as well as a portion of each fund's unfunded liability. When the Senate Republicans offered their budget proposal in March, they went further and suggested that contributions for special funds also be included. However, when the Senate sought to pass a \$2.2 billion pension obligation bill on March 27, 2003, there were insufficient Senate Republican votes for an urgency passage. While the Republicans questioned both the wisdom and legality of

using bonds, their objection seemed to be that they had not been consulted and that the budget solution should not be passed in portions but should be approved as part of a package by the Big Five, the Legislative Leadership and the Governor. The bill was eventually approved without an urgency clause and sent to the Assembly where it is being held at the desk. Presumably, negotiations will take place to reinstate an urgency clause. If the measure is not enacted by May 5, an October general fund payment of \$650 million can not be financed through the bonds, reducing the budget savings accordingly.

Pursuit of County Position on Legislation

AB 355 (Pacheco), as amended on March 26, 2003, would amend the Welfare and Institutions Code's (WIC) definition of escape from custody by a juvenile to include escape or attempted escape from a regional facility, a privately owned facility, or at a field trip site.

Existing law makes it a misdemeanor for a person who is in the custody of a probation officer or any peace officer to escape, or attempt to escape from a juvenile ranch, camp or forestry camp, or during transportation to or from these sites. A person guilty of an escape or attempted escape may be punished by up to one year in county jail.

According to the Probation Department and the author's office, the courts have narrowly defined current law so that a juvenile probationer is not guilty of a crime if they escape or attempt to escape while away from a facility that is not specifically identified in the WIC. For example, it is not a violation of current law for a juvenile probationer to escape or attempt to escape from a privately administered group home facility or while at a field trip site. Therefore, a probationer who escapes or attempts an escape from these facilities would not face any legal consequences.

According to the Assembly Committee on Public Safety's analysis, "There is no logical reason to treat juveniles who attempt to escape while in transit to or from a facility differently from those who attempt to escape while at the field trip site." The intent of AB 355 is to treat an escape or attempted escape from various facilities equally and discourage efforts to escape.

The Probation Department recommends that the county support AB 355, and we concur. Support is consistent with existing Board policy to define the act of a

probationer leaving a field or work trip outside of a camp or ranch without permission as an escape. **Therefore, our Sacramento advocates will support AB 355.**

AB 355 passed the Assembly Public Safety Committee on April 1, 2003 by a 6-0 vote and was referred to the Assembly Appropriations Committee where it awaits a hearing date. AB 355 is supported by the Chief Probation Officers of California, the Los Angeles County District Attorney, and the Peace Officers Research Association of California. There is no opposition on file.

AB 968 (Correa), as introduced on March 26, 2003, would create a job-related presumption for workers' compensation or disability retirement for an injury or death as a result of a vaccination or medication given to prevent infection from a biochemical substance.

CAO Risk Management indicates that AB 968 imposes liability on employers for the effects of a vaccination even if the employee is not in a "first responder" position or in any other way subjected to potential exposure to biochemical substances or blood-borne infectious diseases by the duties of his or her employment. Also, it imposes liability on an employer even if the vaccination is procured solely by the employee without knowledge of the employer. Therefore, my office recommends that the County oppose AB 968. Opposition is consistent with policy adopted by the Board on February 12, 2003, to oppose legislation that creates a new presumption mandating that certain injuries, illnesses, diseases, or physical conditions that an employee may develop are job-related for workers' compensation or service-connected disability retirement. **Therefore, our Sacramento advocates will oppose AB 968.**

AB 968 passed out of the Assembly Committee on Insurance on April 2, 2003 on a 13 to 2 vote and was referred to the Assembly Appropriations Committee where it awaits a hearing date. AB 968 is sponsored by the California Independent Public Employees Legislative Council and is supported by the American Federation of State County and Municipal Employees, Association of Los Angeles County Deputy Sheriffs, California Association of Highway Patrolmen, California Fraternal Order of Police, California State Firefighters Association, Los Angeles County Professional Peace Officers Association, Peace Officers Research Association of California, and the Riverside Sheriff's Association. It is opposed by the California State Association of Counties (CSAC) and the California Association of Joint Powers Authorities. The California Applicant Attorneys Association is opposed unless it is amended to include all employees who voluntarily choose to be vaccinated.

AB 1324 (Steinberg), as introduced on February 21, 2002, would provide medical benefits under workers' compensation for dependents of law enforcement or firefighting employees who contract a blood borne disease from exposure to the employee. Existing law provides a job-related presumption for law enforcement and firefighting personnel for any blood-borne infectious disease that develops or manifests itself during the period of employment.

CAO Risk Management indicates that AB 1324 sets a very bad precedent by expanding workers' compensation benefits to persons other than employees. County Counsel has indicated that AB 1324 raises constitutional issues because the State constitution does not clearly grant authority to the Legislature to provide workers' compensation benefits to persons who are not workers except in the case of a work-related death. This bill provides workers' compensation benefits to dependents even though the worker has not died. If passed, the bill will probably result in extensive and costly litigation to determine its constitutionality.

The bill also appears to create a reimbursable state mandate by increasing the level of service in an existing mandated program. However, there is no provision in the bill for State reimbursement to local government. Therefore, my office recommends that the County oppose AB 1324. Opposition is consistent with County policy to oppose unfunded State mandates and with Board Action on May 17, 2002 to oppose AB 2131 (Leonard) which would have provided that dependants of firefighting employees in public service who contract a blood-borne disease as a result of exposure to the employee shall be compensated for the duration of the disease for all medically necessary health care costs associated with the disease. **Therefore, our Sacramento advocates will oppose AB 1324** which is currently in the Assembly Committee on Insurance with no hearing date set. There is no registered support or opposition at this time.

AB 1481 (Richman), as introduced on February 21, 2003 and **SB 714 (Battin)**, as introduced on February 21, 2003, would require that all reports and medical exams submitted to the State Workers' Compensation Appeals Board to determine employee disability or compensation awards address the percentage that the work-related illness, disease or injury contributed to the employee's disability or death. The bills also provide that permanent disability or death benefits are not payable unless the work-related injury contributed at least 10% to the cause of death or disability when compared to all other causes in total. Prior medical awards for permanent disability would be presumed to exist at the time of any subsequent injury or illness and the accumulation of permanent disability awards for the same employee could not exceed 100% disability.

Additionally, all medical reports must be based upon evidence that utilizes established medical guidelines.

CAO Risk Management indicates that under current law, apportionment of permanent disability to non-work related factors is extremely difficult to obtain. There is no requirement that the reporting physician explain the medical basis for his or her opinion that apportionment is not appropriate. Thus, the employer is often held responsible for payment of disability benefits for a disability that may be the result of the aging process or due to other non-work related factors. Current law also does not limit the accumulation of permanent disability awards to no more than 100%. Awards for permanent disability resulting from different injuries can accumulate to much more than 100% and payments for death or disability may be required even if the job-related factors represent as little as 1% of the total cause of death or disability. These bills would establish a threshold of 10% as the basis for the employer's responsibility for the payment of death or disability benefits.

CAO Risk Management further indicates that passage of either of these bills could save the County from \$3 million to \$5 million per year. Both bills establish equitable standards for determining an employer's obligation to provide death and disability benefits on work-related injury claims and will not reduce benefits on claims that are clearly job related.

My office recommends that the County support AB 1481 and SB 714. Support is consistent with County policy adopted by the Board on February 12, 2003, to strengthen the burden of proof of on-the-job exposure in order to qualify for workers' compensation and retirement benefits for a single incident or for cumulative injuries. **Therefore, our Sacramento advocates will support AB 1481 and SB 714.**

AB 1481 was assigned to the Assembly Committee on Insurance on March 6, 2003. No hearing date has been scheduled and there is currently no registered support or opposition. SB 714 was assigned to the Senate Committee on Labor and Industrial Relations. No hearing date has been set and there is currently no registered support or opposition.

AB 1482 (Richman), as introduced on February 21, 2003, would require that the Administrative Director of the State Department of Labor, Workers' Compensation Division, include outpatient surgery facilities and emergency rooms in the official fee schedule by January 1, 2005. AB 1482 also requires that all medical services provided

to the injured worker from the date of injury be subject to the official fee schedule regardless of when the injury is accepted as being work related. AB 1482 additionally establishes requirements for the Administrative Director to consult with the Industrial Medical Council when updating the fee schedule and specifies that payments to the medical provider not exceed the maximum reasonable fee allowed in the official medical fee schedule except under certain specified and documented circumstances.

Current law does not provide for application of the fee schedule until the date the claim is accepted. This results in different medical fees being paid for the same services on the same case depending on whether the services were provided before or after the date of acceptance. Existing law requires the Administrative Director of the Division of Workers' Compensation to revise and adopt, at least biennially, an official medical fee schedule that establishes reasonable fees for services in the workers' compensation system. The current schedule does not include outpatient and emergency room facilities.

CAO Risk Management indicates that AB 1482 establishes reasonable criteria for the development and application of the official medical fee schedule to medical services provided for work related injuries and that savings could exceed \$1 million annually. Under AB 1482, the fee schedule includes outpatient and emergency room facilities. It also insures appropriate input by the Industrial Medical Council in developing the fee schedule.

My office recommends the County support AB 1482. Support is consistent with existing Board policy adopted on June 12, 2001, to support reforms to workers' compensation and disability retirement which would ensure an efficient, equitable and cost-effective system. **Therefore, our Sacramento advocates will support AB 1482.** AB 1482 was introduced on February 21, 2003 and is sponsored by the author. It is in the Assembly Committee on Insurance with no hearing date set. There is currently no registered support or opposition.

AB 1483 (Richman), as introduced on February 21, 2003, would establish a mandatory certification program for all physicians that treat or evaluate workers' compensation claims and would be effective starting January 1, 2006. Existing workers' compensation law provides for the treatment of injured workers by any physician.

CAO Risk Management indicates that a certification program would result in modest savings, probably less than \$1 million per year and, more importantly, would provide a baseline level competency for physicians treating or evaluating claims.

My office recommends support for AB 1483. Support is consistent with Board action on February 12, 2002, to support AB 1808 (Richman) which, among its provisions, would require special training and certification by January 1, 2005, of every physician that provides treatment and evaluation on workers' compensation cases. **Therefore, our Sacramento advocates will support AB 1483.**

The bill was introduced on February 21, 2003 and was referred to the Assembly Committee on Insurance on March 6, 2003. There is currently no hearing date scheduled. There is no registered support or opposition at this time.

SB 223 (Margett), as introduced on February 13, 2003, extends the requirement to dispense generic drugs to individuals whose injuries are covered by workers' compensation to hospitals, clinics, and physicians. Existing law requires a pharmacy that provides medicines and medical supplies required to cure or relieve the effects of an injury covered by workers' compensation to provide the generic drug equivalent, if available, unless the prescribing physician requests, in writing, that "name-brand" drugs be provided.

CAO Risk Management indicates that SB 223 provides a logical extension to the requirement of having pharmacies prescribe generic drugs to workers' compensation cases. They estimate that the cost savings to the County could exceed \$200,000 per year. My office recommends that the County support SB 223. Support of SB 223 is consistent with Board action on June 12, 2001, to support reform of the State workers' compensation system which would provide reasonable benefit levels and include appropriate reforms to ensure an efficient, equitable and cost-effective workers' compensation system. **Therefore, our Sacramento advocates will support SB 223.**

SB 223 was introduced on February 13, 2003, and is currently in the Senate Labor and Industrial Relations Committee. There is currently no hearing date set and no registered support or opposition.

SB 867 (Burton), as introduced on February 21, 2003, would add acupuncturist to the definition of physician for purposes of appointment as a Qualified Medical Evaluator (QME) in the workers' compensation system. Existing law requires the Industrial

Medical Council to appoint persons to be Qualified Medical Evaluators (QME) for the purpose of evaluating medical/disability issues for workers' compensation. The current law includes within the definition of physician, a doctor of osteopathy, a doctor of chiropractic, and a psychologist.

CAO Risk Management indicates that currently, acupuncturists are defined as "physicians" for purposes of providing acupuncture treatment within the scope of their practice as defined by California law.

CAO Risk Management states that SB 867 would authorize the Industrial Medical Council to appoint an acupuncturist to be a QME for purposes (medical/disability evaluation) that extend beyond their scope of practice. The limitation imposed by current law seems appropriate considering the narrow focus of the acupuncture profession.

CAO Risk Management indicates that SB 867 might increase permanent and temporary disability costs by a small amount on a relatively few cases. The overall increase for the County, however, could exceed \$500,000 per year. **Therefore, our Sacramento advocates will oppose SB 867.** Opposition is consistent with County opposition to SB 1705 (Burton) which would have included acupuncturists as QMEs. The bill is currently in the Senate Committee on Labor and Industrial Relations with no hearing date set. There is no registered support or opposition.

Status of County-Interest Bills

County-supported AB 26 (Pacheco), which would require the Department of Justice (DOJ) to provide registered sex offender information on the Internet, failed in the Assembly Public Safety Committee on April 1, 2003, but reconsideration was granted.

County-sponsored AB 44 (Pacheco), which would address technical issues regarding the notification of various parties of juvenile court proceedings to determine, review, revise or terminate the status of a child as a dependent child of the court, passed the Assembly Appropriations Committee on April 1, 2003 by a 25-0 vote and now proceeds to the Assembly Floor.

County-opposed AB 136 (Kehoe), was amended on April 2 in the Assembly Committee on Insurance and now provides an extended workers' compensation leave to police officers and sheriffs as well as firefighters. As originally introduced, the bill

provided firefighters with up to two-years leave of absence without loss of salary while disabled by injury or illness arising out of and in the course of employment, instead of the current one year period. The estimated increase in County cost is \$20 million per year. AB 136 now goes to the Assembly Appropriations Committee.

County-supported AB 261 (Maddox) was placed on the Assembly appropriations' Committee Suspense File on April 2, 2003 because of concern that it might increase State prison costs. The bill would allow the District Attorney the option to charge illegal pharmaceutical dealers with either a misdemeanor or a felony ("wobbler"). The Committee will consider its Suspense File during the latter part of May.

County-sponsored SB 59 (Escutia), which would establish a writ procedure for the review of all placement orders affecting the adoption of children which would shorten the amount of time on adoption appeals, passed the Senate Judiciary Committee on April 1, 2003 by a 6-0 vote despite substantial opposition from several appellate attorneys. Opponents claimed the measure was overly broad and Senator Escutia indicated that her office and the County would continue to meet with opponents to craft language that will focus SB 59 on those cases involving post-parental rights termination cases in which a specific placement order has been made by a court. SB 59 now proceeds to the Senate Appropriations Committee.

County-supported SB 469 (Scott), which would authorize a school district to use its allowance for instructional materials to purchase materials for the visual and performing arts, foreign language and health, if it has provided basic instructional materials as prescribed in current law, was approved by the Senate Committee on Education on April 2, 2003, and now goes to the Senate Appropriations Committee.

The Assembly Human Services Committee hearing on **County-opposed AB 1470 (Vargas)** has been postponed from April 8 to April 29, 2003. The bill would authorize an increase in IHSS wages and benefits by voter initiative. Our Sacramento representatives, along with the California State Association of Counties, the County Welfare Directors Association, the Urban Counties Caucus and other counties, will continue to strongly oppose the bill.

County-sponsored SB 726 (Romero) was amended on April 2, 2003, to include County language to provide county boards of supervisors with the authority to place a measure authorizing a local tippler's tax on the ballot. This bill will be heard in the Senate Revenue and Taxation Committee on April 30, 2003.

Each Supervisor
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We will continue to keep you advised.

DEJ:GK
MAL:JR:ib

c: Executive Officer, Board of Supervisors
 County Counsel
 Local 660
 All Department Heads
 Legislative Strategist
 Coalition of County Unions
 California Contract Cities Association
 Independent Cities Association
 League of California Cities
 City Managers Associations
 Buddy Program Participants